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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

16  
17 GORGE DESIGN GROUP, LLC, *et al.*,

18 Plaintiffs,

19 v.

20 SYARME, *et al.*,

21 Defendants.  
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Civil Action No. 2:20-CV-01384-WSS

**JOINT REQUEST FOR STATUS  
CONFERENCE REGARDING  
POTENTIAL RULE 54(b) MOTION**

1 This request is made jointly by Defendant NeoMagic Corporation (doing business as  
 2 www.mercadomagic.com) (“Defendant” or “NeoMagic”) and Plaintiffs Gorge Design Group, LLC’s  
 3 and Kirby Erdely’s (collectively “Plaintiffs” or “Gorge”) (Defendant and Plaintiffs collectively, the  
 4 “Parties”). The Parties jointly request that the Court provide a pre-filing telephonic status conference  
 5 to discuss a potential motion for final judgment under Fed. R. Civ. P. 54(b) by NeoMagic.

6 This request is filed by counsel for NeoMagic with consent of counsel for Plaintiffs.

7 Plaintiff dismissed NeoMagic from this case pursuant to Rule 41. ECF No. 31. NeoMagic  
 8 moved for sanctions (ECF No. 42), which this Court denied. ECF No. 76. NeoMagic filed an appeal  
 9 of the order denying sanctions. ECF No. 80. The appeals court indicated that the appeal might not be  
 10 proper yet as Plaintiffs are proceeding against other parties. *See, e.g.*, ECF No. 95.

11 In this case, Plaintiffs named 39 defendants. Twenty-eight (28) have been dismissed. One  
 12 defendant, Meaning Xuansheng, is actively defending the case. And default has been entered against 10  
 13 defendants; but default judgment has not yet been entered. ECF No. 94. So, eleven (11) defendants  
 14 remain active in this case.

15 NeoMagic would like to seek final judgment under Rule 54(b). NeoMagic provided Plaintiffs  
 16 with a draft memorandum in support of a motion seeking such relief. The Parties met and conferred  
 17 telephonically. Plaintiffs’ counsel indicated that Plaintiffs would oppose, and suggested that the Parties  
 18 contact this Court for a pre-filing conference. NeoMagic’s counsel agreed that such a conference  
 19 would be beneficial before filing a potentially-contested motion.

20 Accordingly, the Parties request a telephonic pre-filing status conference to discuss the potential  
 21 filing of such a motion under Rule 54(b).

22 For the Court’s benefit, NeoMagic believes that the proper standard is stated below:

23 [I]n considering whether to grant a motion for certification under Rule 54(b), the Third  
 24 Circuit has articulated factors that the district courts should consider: (1) the  
 25 relationship between the adjudicated and unadjudicated claims; (2) the possibility that  
 26 the need for review might or might not be mooted by future developments in the  
 27 district court; (3) the possibility that the reviewing court might be obliged to consider  
 28 the same issue a second time; (4) the presence or absence of a claim or counterclaim  
 which could result in set-off against the judgment sought to be made final; (5)  
 miscellaneous factors such as delay, economic and solvency considerations, shortening  
 the time of trial, frivolity of competing claims, expense, and the like.

1 *Shingledecker v. W. Power Sports, Inc.*, No. 1:19-CV-00017-CCW, 2021 U.S. Dist. LEXIS 24315, at \*9  
2 (W.D. Pa. Feb. 9, 2021).

3 Plaintiffs' Position

4 Plaintiffs disagree with Defendants regarding the applicability of Rule 54(b) to this case, at least  
5 for the following reasons.

6 First, the Rule 41(a) voluntary dismissal of Defendant from this case was made by notice, so  
7 there is no final decision to certify. ("A defendant's motion for entry of a final judgment under  
8 Rule 54(b) should be denied if the action has already been dismissed by notice.") *In re Bath &*  
9 *Kitchen Fixtures Antitrust Litig.*, 535 F.3d 161, 166 (3d Cir. 2008) (quoting, 8 James Wm. Moore et  
10 al. Moore's Federal Practice § 41.33[6][e] (3d ed. 2008); and citing 9 Charles Alan Wright Arthur  
11 R. Miller, Federal Practice Procedure: Civ.3d § 2367, at 559-61 (3d ed. 2008) ("After the dismissal,  
12 the action no longer is pending in the district court and no further proceedings in the action are  
13 proper.").

14 Second, it is Plaintiffs' position that once Defendant MERCADOMAGICO filed its notice  
15 of appeal, the federal district was deprived of any jurisdiction to hear further matters concerning  
16 Defendant MERCADOMAGICO in this case. *See Fattah v. Rackovan*, M.D. Pa., September 15,  
17 2020, 2020 U.S. Dist. LEXIS 168437 ("the filing of a notice of appeal is 'an event of jurisdictional  
18 significance – it confers jurisdiction on the court of appeal and divests the district court'" (citing  
19 *Griggs v Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) and *In re Mercedes-Benz*  
20 *Emissions Litig.*, 797 Fed. Appx. 695, 698-99 (3<sup>rd</sup> Cir. 2020)).

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**Conclusion**

For these reasons, the parties are seeking a telephonic pre-filing status conference with the Court.

Respectfully submitted,

Dated: March 11, 2021

By: /s/ Andrew T. Oliver  
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